

M.R. 3140

**IN THE
SUPREME COURT
OF
THE STATE OF ILLINOIS**

Order entered June 8, 2018.

(Deleted material is struck through, and new material is underscored.)

Effective July 1, 2018, Illinois Supreme Court Rules 113 and 214 are amended; Rules 280, 280.1, 280.2, 280.3, 280.4, 280.5, and 294 are adopted; Parts I., J., and K. of Article II are amended; and the Article II Forms Appendix is amended, as follows.

Amended Rule 113

Rule 113. Practice and Procedure in Mortgage Foreclosure Cases

(a) Applicability of the Rule. The requirements of this rule supplement, but do not replace, the requirements set forth in the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 *et seq.*) and are applicable only to those foreclosure actions filed on or after the effective date of May 1, 2013.

(b) Supporting Documents for Complaints. In addition to the documents listed in section 15-1504 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1504), a copy of the note, as it currently exists, including all indorsements and allonges, shall be attached to the mortgage foreclosure complaint at the time of filing.

(c) Prove-up Affidavits.

(1) Requirement of Prove-up Affidavits. All plaintiffs seeking a judgment of foreclosure, under section 15-1506 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1506), by default or otherwise, shall be required to submit an affidavit in support of the amounts due and owing under the note when they file any motion requesting a judgment of default against a mortgagor or a judgment of foreclosure.

(2) Content of Prove-up Affidavits. All affidavits submitted in support of entry of a judgment of foreclosure, default or otherwise, shall contain, at a minimum, the following information:

(i) The identity of the affiant and an explanation as to whether the affiant is a custodian of records or a person familiar with the business and its mode of operation. If the affiant is a person familiar with the business and its mode of operation, the affidavit shall explain how the affiant is familiar with the business and its mode of operation.

(ii) An identification of the books, records, and/or other documents in addition to the payment history that the affiant reviewed and/or relied upon in drafting the affidavit, specifically including records transferred from any previous lender or servicer. The payment history must be attached to the affidavit in only those cases where the

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defendant(s) filed an appearance or responsive pleading to the complaint for foreclosure.

(iii) The identification of any computer program or computer software that the entity relies on to record and track mortgage payments. Identification of the computer program or computer software shall also include the source of the information, the method and time of preparation of the record to establish that the computer program produces an accurate payment history, and an explanation as to why the records should be considered "business records" within the meaning of the law.

(3) Additional Evidence. The affidavit shall contain any additional evidence, as may be necessary, in connection with the party's right to enforce the instrument of indebtedness.

(4) Form of Prove-up Affidavits. The affidavit prepared in support of entry of a judgment of foreclosure, by default or otherwise, shall not have a stand-alone signature page if formatting allows the signature to begin on the last page of the affiant's statements. The affidavit prepared shall, at a minimum, be prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article II Forms Appendix.

If executed within the boundaries of Illinois, the affidavit may be signed pursuant to section 1-109 of the Illinois Code of Civil Procedure (735 ILCS 5/1-109) rather than being notarized.

(d) Defaults.

(1) Notice Required. In all mortgage foreclosure cases where the borrower is defaulted by court order, a notice of default and entry of judgment of foreclosure shall be prepared by the attorney for plaintiff and shall be mailed by the Clerk of the Circuit Court for each judicial circuit. Within two business days after the entry of default, the attorney for plaintiff shall prepare the notice in its entirety, file it with the Clerk of the Circuit Court, and provide the Clerk with one copy for mailing to each borrower address specified in the notice. Within five business days after the entry of default, the Clerk of the Circuit Court shall mail, by United States Postal Service, a copy of the notice of default and entry of judgment of foreclosure to the address(es) provided by the attorney for the plaintiff in an envelope bearing the return address of the Clerk of the Circuit Court and file proof thereof. The notice shall be mailed to the property address or the address on any appearance or other document filed by any defendant. Any notices returned by the United States Postal Service as undeliverable shall be filed in the case file maintained by the Clerk of the Circuit Court.

(2) Form of Notice. The notice of default and entry of judgment of foreclosure shall be prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article II Forms Appendix.

(e) Effect on Judgment and Orders. Neither the failure to send the notice required by paragraph (d)(1)(i) nor any errors in preparing or sending the notice shall affect the legal validity of the order of default, the judgment of foreclosure, or any other orders entered pursuant to the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 *et seq.*) and cannot be the basis for vacating an otherwise validly entered order.

(f) Judicial Sales. In addition to the requirements for judicial sales set forth in sections 15-1506 and 15-1507 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1506, 15-1507) the following will apply to mortgage foreclosure sales:

(1) Notice of Sale. Not fewer than 10 business days before the sale, the attorney for the plaintiff shall send notice by mail to all defendants, including defendants in default, of the foreclosure sale date, time, and location of the sale.

(2) **Selling Officers.** Any foreclosure sale held pursuant to section 15-1507 may be conducted by a private selling officer who is appointed in accordance with section 15-1506(f)(3).

(3) **Surplus Funds.** If a judicial foreclosure sale held pursuant to Section 15-1507 of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1507) results in the existence of a surplus of funds exceeding the amount due and owing as set forth in the judgment of foreclosure, the attorney for the plaintiff shall send a special notice to the mortgagors advising them of the surplus funds and enclosing a form for presentment of the motion to the court for the funds.

(g) Special Notice of Surplus Funds. The special notice shall be mailed and shall be prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article II Forms Appendix.

(h) Petition for Turnover of Surplus Funds. Each judicial circuit shall make readily available a form petition for turnover of surplus funds to be included in the Special Notice of Surplus Funds required to be mailed by the attorney for plaintiffs. The petition shall be prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article II Forms Appendix.

(i) Deceased Mortgagors. In all mortgage foreclosure cases where the mortgagor or mortgagors is or are deceased, and no estate has been opened for the deceased mortgagor(s), the court shall, on motion of a party, appoint a special representative to stand in the place of the deceased mortgagor(s) who shall act in a manner similar to that provided by section 13-209 of the Illinois Code of Civil Procedure (735 ILCS 5/13-209). Special representatives appointed under this paragraph shall be entitled to costs and reasonable attorney fees from the party who sought the appointment as well as any successor or assign of that party as may be applicable, subject to administrative regulation by the court.

Adopted Feb. 22, 2013, eff. May 1, 2013; amended Apr. 8, 2013, eff. May 1, 2013; amended Dec. 29, 2017, eff. Jan. 1, 2018; amended June 8, 2018, eff. July 1, 2018.

Committee Comments
(February 22, 2013)

On April 11, 2011, the Illinois Supreme Court created the Special Supreme Court Committee on Mortgage Foreclosures and charged it with the following tasks: investigating the procedures used throughout the State of Illinois in mortgage foreclosure proceedings; studying relevant Illinois Supreme Court Rules and local rules that directly or indirectly affect such proceedings; analyzing the procedures adopted in other states in response to the unprecedented number of foreclosure filings nationwide; and reviewing legislative proposals pending in the Illinois General Assembly that may impact the mortgage foreclosure rules for the state. To meet this charge, the Committee established subcommittees, one of which was the Practice and Procedures Subcommittee. The Practice and Procedures Subcommittee submitted proposals for changes to the practice and procedures for mortgage foreclosure cases for discussion at a public hearing held on April 27, 2012. After consideration of comments and discussion at the public hearing, the Committee proposed this new rule governing mortgage foreclosure practice and procedure.

Paragraph (b) is derived from the need to address evidentiary issues that often arise during

the course of a mortgage foreclosure. The new requirement to attach a copy of the note, as it currently exists with all indorsements and allonges, supplements the Illinois Mortgage Foreclosure Law to provide this necessary document to the defendant and the court at the outset. Including this additional document will prevent unnecessary delays caused by motion practice and discovery often used by defendants.

In drafting this section of the rule, the Committee took into consideration the positions of both the judiciary and comments provided at the public hearing regarding attaching a copy of all assignments to the complaint. The Committee members recognized that with the increase in transfers of mortgages and notes, Illinois courts have seen a dramatic increase in assertions by mortgagors that the mortgagee lacks standing to bring the foreclosure complaint. Quite often, mortgagors who ignore the judicial process until after a foreclosure or sale has occurred have raised standing issues as a defense, but have been told that their claim was forfeited by the failure to raise it in a timely manner. The Committee considered that as a matter of judicial economy, requiring that all executed assignments of the mortgage be attached at the time of filing could provide current documentation at the outset to all defendants and the circuit court demonstrating how the plaintiff has standing to file the complaint. However, due to industry changes in the documentation requirements for mortgage assignments over the past two decades, a requirement to attach all copies of assignments to the complaint at the time of filing proved to be impractical and overly burdensome for practitioners given the current volume of foreclosures statewide. This rule does not prohibit the attachment of such assignments should a plaintiff choose to do so. This rule also does not preclude the requirement of submission of all assignments at a later date in the litigation should the appropriate issues present themselves and presentation of the documents to the court and litigants becomes necessary.

Paragraph (c) addresses some of the many issues that arise from document handling procedures by lenders and servicers. Illinois courts, along with courts nationwide, have faced issues relating to "robo-signing" practices at major lenders, where affidavits were not properly notarized or where the affiant did not actually review any of the pertinent loan records. In addition to questionable document handling procedures, circuit courts have dealt with prove-up affidavits that come in varied forms, many of which do not properly address the foundational requirements necessary for establishing the accuracy of computerized business records nor the correct amount due and owing under the mortgage and note. Paragraph (c)(2) identifies the minimum requirements necessary for a prove-up affidavit submitted by the mortgagee for entry of a judgment of foreclosure and Form 1 gives a form affidavit that should be used.

No judgment of foreclosure will be entered without compliance with Paragraph (c). However, Form 1 establishes only the amounts due and owing on the borrower's loan. Paragraph (c)(2) and Form 1 do not relieve the foreclosing party from establishing other evidentiary requirements, as necessary, in connection with proving the allegations contained in its complaint including, but not limited to, the party's right to enforce the instrument of indebtedness, if applicable.

Paragraph (d) addresses the desire of the Illinois courts to have adequate assurance that the mortgagor is sufficiently notified when an order of default and a judgment of foreclosure are entered against the mortgagor. Many mortgagors ignore court notices, believing that they are in error because their lender is negotiating with them for a loan modification. Other mortgagors have been told by servicers that their foreclosure case is on hold, but the servicer has not told the plaintiff's attorneys to place the file on hold. Currently, many circuit court clerks send a generic

postcard that notifies any defendant, who has an appearance on file, of entry of a default order. Thus, if the mortgagor has not filed an appearance, the mortgagor may not receive notice of the default order from the clerk. The post card may not contain any helpful information that the defendant can understand. Likewise, notice of the default order is not mailed to the property address as a matter of course. While section 2-1302 of the Illinois Code of Civil Procedure (735 ILCS 5/2-1302) requires that a plaintiff give notice of entry of a default order to be sent to all parties against whom the order applies, failure to give such notice does not affect the validity of the order. As a result, a mortgagor may not receive notice of entry of the default order from either the Clerk of the Circuit Court or the mortgagee's counsel.

Paragraph (d) addresses this deficiency in the notification process and requires the mortgagee's counsel to prepare a specific "Notice of Entry of Default and Judgment of Foreclosure" (Form 2). Counsel for the plaintiff must prepare this notice for the property address or any other address where the defendant is most likely to receive it. A defendant may have filed an appearance or another court paper that would indicate an address that may be different from the address of service of summons and different from the property address. By preparing this notice, and having the Clerk of the Circuit Court mail the notices, any undeliverable mail will remain in the court file and defaulted mortgagors will receive a clearer notice of the order and the judgment of foreclosure than they do currently.

Paragraph (f) addresses two issues relating to judicial sales that have become substantial problems throughout the state. Paragraph (f)(1) attempts to provide adequate notice to those mortgagors who are about to lose their home. Currently, the Illinois Mortgage Foreclosure Law does not specify that a separate notice of the sale be sent to defaulted defendants, and assumes that the publication requirements are adequate for those that have not otherwise participated in the foreclosure proceedings. See 735 ILCS 5/15-1507(c)(3) (lacking a specific requirement that a separate notice of sale be sent to a defaulted mortgagor). However, in many residential cases, a lack of participation, for any reason, results in a lack of notice of the sale to the mortgagor living in the property being foreclosed. That lack of notice often results in the mortgagor learning about the sale on the eve of the sale and filing an emergency motion to stay the sale. In cases where the mortgagor finds out about the sale from a notice of confirmation of sale or through the sheriff's notice of eviction, the courts then must hear motions to vacate the sale and motions to stay possession. See 735 ILCS 5/15-1508(b-5) (requiring notice of confirmation of sale be sent to a defaulted mortgagor). Many of these motions could be avoided and judicial efficiency increased if all parties, including defaulted parties, are given notice of the sale. Accordingly, paragraph (f)(1) implements a new notice requirement to supplement section 15-1507(c)(3) by mandating a separate notice to a defaulted mortgagor presale while also complementing section 15-1508(b-5) that requires notice postsale for confirmation.

Paragraph (f)(2) addresses the selling officer. Currently, section 15-1506(f)(3) of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1506(f)(3)) allows, by special motion, an official other than the one customarily designated by a court to be appointed to conduct judicial sales. The Committee recognized that the customarily appointed selling officer is the sheriff in many counties statewide, section 15-1506 allows a court to appoint a private selling officer upon motion. Given the high volume of foreclosures throughout the state, many sales are being held nearly a year after the expiration of the redemption period. In some cases, this is due to the failure of the sheriff to promptly obey the court order commanding him to sell the property at auction. Accordingly, the loan accrues late fees and increased interest charges. These additional

charges do not benefit any party to the foreclosure and do not help the communities if the property remains vacant during that idle period. In order to correct these deficiencies in the process, the Committee recommended that a rule be enacted that expressly allows the use of private selling officers throughout the state. In many instances, private selling officers have lower costs with the capacity and ability to conduct a sale in a timely manner that prevents the accrual of additional fees and facilitates the rehabilitation of properties into valuable components of neighborhoods.

Paragraph (g) implements a specific notification process for informing mortgagors about the existence of surplus funds resulting from a judicial sale. Currently, many clerks of the circuit courts are holding unclaimed surplus funds from judicial sales. Due to the lack of notice, these funds remain unclaimed. Paragraph (g) implements a specific "Special Notice of Surplus Funds" (Form 3) that the plaintiff's counsel must send to the mortgagors and paragraph (h) includes a specific motion (Form 4) that can be completed by the mortgagors for presentment to the court without an attorney. This paragraph is intended to facilitate the ability of mortgagors to claim those funds to which they may be entitled.

Paragraph (i) addresses the issue of a deceased mortgagor and the subject matter jurisdiction issues addressed in *ABN Amro Mortgage Group, Inc. v. McGahan*, 237 Ill. 2d 526 (2010), which have not been specifically addressed by remedial legislation.

Amended Rule 214

Rule 214. Discovery of Documents, Objects, and Tangible Things-Inspection of Real Estate

(a) Any party may by written request direct any other party to produce for inspection, copying, reproduction photographing, testing or sampling specified documents, including electronically stored information as defined under Rule 201-(b)(4), objects or tangible things, or to permit access to real estate for the purpose of making surface or subsurface inspections or surveys or photographs, or tests or taking samples, or to disclose information calculated to lead to the discovery of the whereabouts of any of these items, whenever the nature, contents, or condition of such documents, objects, tangible things, or real estate is relevant to the subject matter of the action. The request shall specify a reasonable time, which shall not be less than 28 days after service of the request except by agreement or by order of court, and the place and manner of making the inspection and performing the related acts.

(b) With regard to electronically stored information as defined in Rule 201-(b)(4), if a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(c) One copy of the request shall be served on all other parties entitled to notice. A party served with the written request shall (1) identify all materials in the party's possession responsive to the request and copy or provide reasonable opportunity for copying or inspections. Production of documents shall be as they are kept in the usual course of business or organized and labeled to correspond with the categories in the request, or (2) serve upon the party so requesting written objections on the ground that the request is improper in whole or in part. If written objections to a part of the request are made, the remainder of the request shall be complied with. A party may object to a request on the basis that the burden or expense of producing the requested materials would be disproportionate to the likely benefit, in light of the factors set out in Rule 201-(c)(3).

Any objection to the request or the refusal to respond shall be heard by the court upon prompt notice and motion of the party submitting the request. If the party claims that the item is not in his or her possession or control or that he or she does not have information calculated to lead to the discovery of its whereabouts, the party may be ordered to submit to examination in open court or by deposition regarding such claim. The producing party shall furnish an affidavit stating whether the production is complete in accordance with the request. Copies of identifications, objections and affidavits of completeness shall be served on all parties entitled to notice.

(d) A party has a duty to seasonably supplement any prior response to the extent of documents, objects or tangible things which subsequently come into that party's possession or control or become known to that party.

(e) This rule does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon real estate.

Amended June 28, 1974, effective September 1, 1974; amended October 1, 1976, effective November 15, 1976; amended June 1, 1995, effective January 1, 1996; amended May 29, 2014, eff. July 1, 2014; amended June 8, 2018, eff. July 1, 2018.

Committee Comments
(Revised May 29, 2014)

Paragraphs (a) and (b)

The Committee reorganized Rule 214 as well as creating new paragraph (b), which is modeled after Federal Rule of Civil Procedure 34(b).

Paragraph (c)

The Committee's intent was to assist in the area of electronically stored information by allowing for identification of materials.

Committee Comments
(Revised June 1, 1995)

As originally promulgated Rule 214 was patterned after former Rule 17. It provided for discovery of documents and tangible things, and for entry upon real estate, in the custody or control of any "party or other person," by moving the court for an order compelling such discovery. In 1974, the rule was amended to eliminate the requirement of a court order. Under the amended rule a party seeking production of documents or tangible things or entry on real estate in the custody or control of any other party may serve the party with a request for the production of the documents or things, or for permission to enter upon the real estate. The party receiving the request must comply with it or serve objections. If objections are served, the party seeking the discovery may serve a notice of hearing on the objections, or in case of failure to respond to the request may move the court for an order under Rule 219(a).

The request procedure may be utilized only when discovery is sought from a party to the

action. Discovery of documents and tangible things in the custody or control of a person not a party may be obtained by serving him with a subpoena *duces tecum* for the taking of his deposition. The last paragraph of the rule was added to indicate that the rule is not preemptive of an independent action for discovery in the nature of a bill in equity. Such an action can be employed, then, in the occasional case in which a party seeks to inspect real estate that is in the custody or control of a person not a party to the main action.

The first paragraph has been revised to require a party producing documents to produce those documents organized in the order in which they are kept in the usual course of business, or organized and labeled to correspond with the categories in the request. This revision requires the party producing documents and that party's attorney to make a good-faith review of documents produced to ensure full compliance with the request, but not to burden the requesting party with nonresponsive documents.

The failure to organize the requested documents as required by this rule, or the production of nonresponsive documents intermingled among the requested documents, constitutes a discovery abuse subject to sanctions under Rule 219.

The first paragraph has also been amended to require a party to include in that party's production response all responsive information in computer storage in printed form. This change is intended to prevent parties producing information from computer storage on storage disks or in any other manner which tends to frustrate the party requesting discovery from being able to access the information produced.

Rule 201(b) has also been amended to include in the definition of "documents" all retrievable information in computer storage, so that there can be no question but that a producing party must search its computer storage when responding to a request to produce documents pursuant to this rule.

The last sentence of the first paragraph has also been revised to make mandatory the requirement that the party producing documents furnish an affidavit stating whether the production is complete in accordance with the request. Previously, the party producing documents was not required to furnish such an affidavit unless requested to do so.

The second paragraph is new. This paragraph parallels the similar requirement in Rule 213 that a party must seasonably supplement any prior response to the extent that documents, objects or tangible things subsequently come into that party's possession or control or become known to that party. A party who has knowledge of documents, objects or tangible things responsive to a previously served request must disclose that information to the requesting party whether or not the actual documents, objects or tangible things are in the possession of the responding party. To the extent that responsive documents, objects or tangible things are not in the responding party's possession, the compliance affidavit requires the producing party to identify the location and nature of such responsive documents, objects or tangible things. It is the intent of this rule that a party must produce all responsive documents, objects or tangible things in its possession, and fully disclose the party's knowledge of the existence and location of responsive documents, objects or tangible things not in its possession so as to enable the requesting party to obtain the responsive documents, objects or tangible things from the custodian.

New Part I.

PART I. CREDIT CARD OR DEBT BUYER COLLECTION ACTIONS

New Rule 280

Rule 280. Applicability.

A civil action is subject to the requirements of this Part if the complaint contains any claim originating from a credit card or by a debt buyer attempting to collect a consumer debt.

Adopted June 8, 2018, eff. July 1, 2018.

New Rule 280.1

Rule 280.1. Definitions for Credit Card or Debt Buyer Collection Actions.

For purposes of a civil action subject to the requirements of this Part:

(a) "Affidavit" means an affidavit or a verification under Section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109).

(b) "Assignment" means a transfer of debt from the owner of the debt to the purchaser of the debt.

(c) "Charge-off balance" means an account principal and other legally collectible costs, expenses, and interest accrued prior to the charge-off date, less any payments or settlement.

(d) "Charge-off creditor" means the person or entity who extended credit to the natural persons involved in a consumer credit transaction on the charge-off date.

(e) "Charge-off date" means the date on which a receivable is treated as a loss or expense.

(f) "Consumer credit transaction" means a transaction between a natural person and another person in which property, service, or money is acquired on credit by that natural person from such other person primarily for personal, family, or household purposes.

(g) "Consumer debt" or "consumer credit" means money, property, or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction.

(h) "Credit card" means any instrument or device, whether known as a credit card, credit plate, charge plate or any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services or anything else of value on credit or in consideration or an undertaking or guaranty by the issuer of the payment of a check drawn by the cardholder.

(i) "Debt buyer" means a person or entity that is engaged in the business of purchasing delinquent or charged-off consumer loans or consumer credit accounts or other delinquent consumer debt for collection purposes, whether it collects the debt itself or hires a third-party for collection or an attorney at law for litigation in order to collect such debt.

(j) "Debt buyer collection action" means a civil action in which the complaint seeks to recover on a consumer debt purchased by a debt buyer.

(k) "Original consumer debt" means the amount of the charge-off balance.

(l) "Person" means any natural person or business entity of any kind, including but not

limited to a corporation, partnership, limited partnership, limited liability partnership, or limited liability company.

(m) "Principal" means the unpaid balance of the amount borrowed in any consumer credit transaction, not including any interest, fees, or other charges.

Adopted June 8, 2018, eff. July 1, 2018.

New Rule 280.2

Rule 280.2. Complaint in Credit Card or Debt Buyer Collection Actions.

In addition to the requirements set forth in Rules 131 and 282(a), the complaint in a credit card or debt buyer collection actions shall:

(a) Print the name of the person who signs the complaint under the signature line;

(b) Attach a completed Credit Card or Debt Buyer Collection Affidavit, prepared by utilizing, or substantially adopting the appearance and content of, the form provided in the Article II Forms Appendix, together with all required documents;

(c) Include a statement that the suit is filed within a relevant statute of limitations; and

(d) Have the Credit Card or Debt Buyer Collection Affidavit signed by the plaintiff or the plaintiff's designated agent. For purposes of this Rule, the attorney for the plaintiff may not sign the affidavit on behalf of the plaintiff or plaintiff's designated agent.

Adopted June 8, 2018, eff. July 1, 2018.

New Rule 280.3

Rule 280.3. Continuance of Trial or Voluntary Dismissal of Credit Card or Debt Buyer Collection Actions.

Absent a properly noticed written motion for continuance under Rule 231 or for voluntary dismissal under section 2-1009 of the Code of Civil Procedure (735 ILCS 5/2-1009), a motion for continuance or voluntary dismissal made on the date of trial shall be denied, and the case shall proceed to trial, unless:

(a) The court finds that (i) each party has consented to a continuance with an understanding of the potential consequences of not consenting and (ii) a continuance serves the interest of justice; or

(b) The court is unable to proceed on the trial date, in which case an order may be entered continuing the case for a final trial date.

(c) Nothing herein shall limit the right of any litigant to seek a continuance subject the provisions and requirements of Rule 231(f).

Adopted June 8, 2018, eff. July 1, 2018.

New Rule 280.4

Rule 280.4. Consequences for Non-Compliance.

If the plaintiff fails to comply with the requirements of this Part, the court may not enter a default judgment, and the court, on motion or on its own initiative, may dismiss the complaint.

Amended June 8, 2018, eff. July 1, 2018.

New Rule 280.5

Rule 280.5. Identity Theft Relating to Credit Card or Debt Buyer Collection Actions.

(a) A defendant in a credit card or debt buyer collection action who asserts that he or she is a victim of identity theft with respect to the consumer debt that is the subject of the action, must serve the following on the plaintiff:

(1) An Identity Theft Affidavit in accordance with the form approved by the Illinois Attorney General; and

(2) An Identity Theft Affidavit (Credit Card or Debt Buyer Collection Action) in accordance with the form approved by the Illinois Supreme Court, which can be found in the Article II Forms Appendix.

Of these two affidavits, only the Identity Theft Affidavit (Credit Card or Debt Buyer Collection Action) must be filed with the court. Within 90 days of service of the Identity Theft Affidavit (Credit Card or Debt Buyer Collection Action) on the plaintiff, the plaintiff or the court, on its motion, shall dismiss the case unless the plaintiff files an affidavit asserting facts that indicate the defendant is not the victim of identity theft and is responsible for the consumer debt at issue.

Amended June 8, 2018, eff. July 1, 2018.

Amended Part J

PART J.I. SMALL CLAIMS

Amended Part K

PART K.J. MISCELLANEOUS

New Rule 294

Rule 294. Disqualification of Lawyer Serving in Collaborative Process and Lawyers in Associated Law Firm.

(a) Except as provided in paragraph (c), a lawyer serving or who has served as a collaborative process lawyer, as defined in the Collaborative Process Act (750 ILCS 90/1 et seq.), is disqualified from appearing before a tribunal to represent any party in a proceeding relating to the collaborative process matter in which the lawyer serves or served as a collaborative process lawyer. Further, a lawyer serving or who has served as a collaborative

process lawyer must withdraw from the representation if the collaborative process fails.

(b) A disqualification prescribed by paragraph (a) is imputed to all lawyers in a law firm with which the lawyer disqualified by paragraph (a) is associated and may not be waived; nor may the disqualification of any lawyer be removed by screening.

(c) A lawyer otherwise disqualified by paragraphs (a) or (b) may represent a party before a tribunal:

(1) to comply with the procedural rules of the tribunal as necessary to facilitate the collaborative process;

(2) to seek approval of an agreement resulting from the collaborative process; or

(3) to seek or defend a petition for an emergency order to protect the health, safety, welfare, or interest of a party or person eligible for protection under applicable law.

Adopted June 8, 2018, eff. July 1, 2018.

Amended Article II Forms Appendix

PART I. CREDIT CARD OR DEBT BUYER COLLECTION ACTIONS

Rule 280.2. Complaint in Credit Card or Debt Buyer Collection Actions.

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT

COUNTY, ILLINOIS
(OR, IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS)

Plaintiff

v.

Defendant

)
)
) CASE NUMBER: _____
)
)

CREDIT CARD OR DEBT BUYER COLLECTION ACTION AFFIDAVIT (SUPREME COURT RULE 280.2)

INSTRUCTIONS: Provide the following information and documents. Supreme Court Rule 280.1 provides the definitions of the terms in this Affidavit.

Comes now affiant, and states:

☐ I _____ am Plaintiff

(Name of Affiant)

OR

☐ a designated full-time employee of _____ (Plaintiff)

(Name of Plaintiff or Agent)

I am of adult age and am fully authorized by Plaintiff to make the following representations. I am familiar with the record keeping practices of Plaintiff. The following representations are true according to documents kept in the normal course of Plaintiff's business and/or my personal knowledge:

1. IDENTIFICATION ABOUT THE CONSUMER DEBT OR ACCOUNT

Complete the tables and check all applicable boxes.

a. As of charge-off date:

Full name of the creditor	Full name of the defendant as it appears on the account	Last four digits of the account number	Date the account was opened or the debt originated	Nature of the debt, (credit card debt, payday loan, retail installment loan, etc.)

b. Attach one of the following:

- ☐ The written contract giving rise to the debt that is the subject of this court case (the "Consumer Debt").
- ☐ The court case is based on an unwritten contract, and attached is a copy of a document provided to the consumer while the account was active, demonstrating that the consumer debt was incurred by the consumer. For a revolving credit account, a statement reflecting the charge-off balance shall be deemed sufficient to satisfy this requirement. The Plaintiff further certifies that it has in its possession and can produce on request the most recent monthly statement recording a purchase transaction, last payment, or balance transfer. The charge-off statement attached will not reflect any post charge-off payments or credits by or to the charge-off creditor, the debt buyer or their attorneys.

c. The most recent activity on the account prior to or after charge-off, includes:

Amount of Original Debt or Charge-off Balance	Charge-off Date	Date of Last Payment	Amount of Last Payment	Total Amount Paid Since Charge-off Date

2. PROOF OF OWNERSHIP OR RIGHT TO SUE FOR DEBT BUYERS

Complete the table and list the prior owners or creditors since the charge-off date. Start with the first assignment through the current creditor or owner of the consumer debt. List in chronological order, beginning with the first assignment:

From (Name)	To (Name)	Date of Assignment

☐ Does not apply – Plaintiff is the charge-off creditor.

3. ADDITIONAL ACCOUNT INFORMATION AFTER CHARGE-OFF

Plaintiff is seeking additional amounts after the charge-off date:

☐ No

☐ Yes. If yes, as the charge-off date and within the last 30 days:

☐ Defendant has made additional payments in the amount of \$ _____;

☐ Total amount of interest accrued: \$ _____;

☐ Total amount of non-interest charges or fee accrued \$ _____;

☐ Plaintiff is seeking attorney's fees in the amount of \$ _____.

Affiants may certify their statements pursuant to section 1-109 of the Code of Civil Procedure or have their signature notarized in the manner required by law.

Under penalties as provided by law under section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that [s]he verily believes the same to be true.

Name of Affiant

Signature of Affiant

Date

Rule 280.5. Identity Theft Relating to Credit Card or Debt Buyer Collection Actions.

This form is approved by the Illinois Supreme Court and is required to be accepted in all Illinois Circuit Courts.

STATE OF ILLINOIS, CIRCUIT COURT _____ COUNTY		IDENTITY THEFT AFFIDAVIT (Credit Card or Debt Buyer Collection Action)	<i>For Court Use Only</i>
Instructions ▼			
Directly above, enter the name of the county where the case was filed.			
Enter the name of the person who started the lawsuit as Plaintiff.			
Enter the name of the person being sued as Defendant.			
Enter the Case Number given by the Circuit Clerk.	Plaintiff <i>(First, middle, last name)</i> v. Defendant <i>(First, middle, last name)</i>	Case Number	

Complete this form and file it with the Circuit Clerk.

You must also complete the Illinois Attorney General Identity Theft Affidavit and send it to the other party.

You can find it here:
www.ag.state.il.us/publications/pdf/victim.pdf
Do not file it with the Circuit Clerk.

Sign and print your name in front of an official Illinois notary public.

Enter your complete address and telephone number.

1. I am the defendant in this lawsuit.
2. This lawsuit is about a debt that I did not create. Someone stole my identity and used my identity to create the debt.
3. I have completed an Illinois Attorney General Identity Theft Affidavit. I am mailing the Illinois Attorney General Identity Theft Affidavit, along with all required documentation, to the plaintiff.

Your Signature

Street Address

Print Your Name

City, State, ZIP

Telephone

DO NOT complete this section. The notary will complete it.

Notary Public

State of Illinois

County of _____

Signed and sworn to before me on _____ by _____
Date Name

Seal

Signature of Notary

PROOF OF DELIVERY

In **1a**, enter the name, mailing address, and email address of the party or lawyer to whom you sent the document.

In **1b**, check the box to show how you sent the document, and fill in any other information required on the blank lines.

CAUTION: If the other party does not have a lawyer, you may send the document by email only if the other party has listed their email address on a court document.

In **c**, fill in the date and time that you sent the document.

In **2**, if you sent the document to more than 1 party or lawyer, fill in **a**, **b**, and **c**. Otherwise leave **2** blank.

1. I sent this document:

a. To:

Name:

First

Middle

Last

Address:

Street, Apt #

City

State

ZIP

Email address: _____

b. By:

☐

Personal hand delivery

☐

Regular, First-Class Mail, put into the U.S. Mail with postage paid at:

Address of Post Office or Mailbox

☐

Third-party commercial carrier, with delivery paid for at:

Name (for example, FedEx or UPS) and office address

☐

The court's electronic filing manager (EFM) or an approved electronic filing service provider (EFSP)

☐

Email (not through an EFM or EFSP)

☐

Mail from a prison or jail at:

Name of prison or jail

c. On:

Date

At:

Time

☐

a.m.

☐

p.m.

2. I sent this document:

a. To:

Name:

First

Middle

Last

Address:

Street, Apt #

City

State

ZIP

Email address: _____

b. By:

☐

Personal hand delivery

☐

Regular, First-Class Mail, put into the U.S. Mail with postage paid at:

Address of Post Office or Mailbox

☐

Third-party commercial carrier, with delivery paid for at:

Name (for example, FedEx or UPS) and office address

☐

The court's electronic filing manager (EFM) or an approved electronic filing service provider (EFSP)

☐

Email (not through an EFM or EFSP)

☐

Mail from a prison or jail at:

Name of prison or jail

Enter the Case Number given by the Circuit Clerk: _____

c. On: _____
Date
At: _____ ☐ a.m. ☐ p.m.
Time

In 3, if you sent the document to more than 2 parties or lawyers, fill in a, b, and c. Otherwise leave 3 blank.

3. I sent this document:

a. To:
Name: _____
First Middle Last
Address: _____
Street, Apt # City State ZIP
Email address: _____

b. By: ☐ Personal hand delivery
☐ Regular, First-Class Mail, put into the U.S. Mail with postage paid at:

Address of Post Office or Mailbox

☐ Third-party commercial carrier, with delivery paid for at:

Name (for example, FedEx or UPS) and office address

- ☐ The court's electronic filing manager (EFM) or an approved electronic filing service provider (EFSP)
☐ Email (not through an EFM or EFSP)
☐ Mail from a prison or jail at:

Name of prison or jail

c. On: _____
Date
At: _____ ☐ a.m. ☐ p.m.
Time

If you sent your document to more than 3 parties or lawyers, check the box and insert the *Additional Proof of Delivery* form after this page.

☐ I have attached an *Additional Proof of Delivery* form.

Under the Code of Civil Procedure, [735 ILCS 5/1-109](#), making a statement on this form that you know to be false is perjury, a Class 3 Felony.

I certify that everything in the Proof of Service is true and correct. I understand that making a false statement on this form is perjury and has penalties provided by law under [735 ILCS 5/1-109](#).

After you finish this form, sign and print your name.

/s/ _____
Your Signature

Street Address

Print Your Name

City, State, ZIP

If you are completing this form on a computer, sign your name by typing it. If you are completing it by hand, sign and print your name.

Telephone